IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4682 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISING ALIAS FAUJI RADHESHYAM SAINI RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4682 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 09-03-2004, by

which the petitioner is detained as a "bootlegger" under PASA. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case registered against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering the aforesaid case and statements of two witnesses, the detaining authority has passed the order of detention, which is under challenge in this petition.

2) Ms.Mishra, learned advocate for the petitioner has submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner.

3) Ms.Mishra has also submitted that at the time of passing the order of detention, the petitioner was already in judicial custody and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail.

4) To substantiate her say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

> "There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the

case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

5) Considering the aforesaid judgment and considering the fact that since there is nothing to show as to on what basis the authority has come to the conclusion that the petitioner will be released on bail, especially when no bail application is pending, the order of detention is required to be set aside.

6) At this stage, learned advocate for the petitioner made a voluntary statement that in case the petitioner is released on bail, he will not enter Meghaninagar Police Station area of Ahmedabad city upto 30th November, 2004. This statement is recorded and it is for the police authority to monitor the compliance of this statement. It is also stated by her that at present the petitioner is in Junagadh District Jail. In view of this statement, office may also sent writ of this order to the District Jail, Junagadh.

7) On the aforesaid ground, this petition is allowed. The order of detention dated 09-03-2004 is quashed and set aside. The detenu, Harising alias Fauji Radheshyam Saini Rajput is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
/malek